

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	McIntyre et al.	Examiner:	Swartz, Rodney P
U.S. Pat. No.:	7,579,009	Serial No.:	10/526,228
Issued:	August 25, 2009	Filed:	March 1, 2005
Art Unit:	1645		
Title:	<i>Whole Bacterial Cells as Immune Modulator</i>		

Mail Stop Petition

United States Patent and Trademark Office
Office of Petitions
Randolph Building
401 Dulany Street
Alexandria VA 22314

**STATEMENT IN SUPPORT OF PETITION FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)**

The undersigned respectfully requests the reconsideration of the patent term adjustment ("PTA") for U.S. Patent No. 7,579,009 ("the '009 patent").

The term of the '009 patent has been extended by 0 days. The calculation for the current PTA calculated by the USPTO is 0 days based on 376 days of Applicant delay. See PTA calculation downloaded from PAIR, attached as Exhibit A. Patentees believe that patentees are entitled to an additional portion of patent term which amounts to a total of **161 days**.

Support for the 161 days of PTA is justified as follows. Periods of delay that fall under 35 U.S.C. § 154 (b)(1)(B) are known as "B delays" and include "a one-day term extension [] for every day greater than three years after the filing date that it takes for the patent to issue, regardless of whether the delay is the fault of the PTO."

The present patent application is a national stage filing under 35 U.S.C. § 371 of international application number PCT/GB03/03873, filed September 6, 2003, which claims the benefit of priority of GB Application No. 0220809.8, filed September 6, 2002 and GB Application No. 0317144.4, filed July 22, 2003. Under 35 U.S.C. § 371(b), the national stage for the present application commenced upon expiration of 30 months from the priority date of the international application. Therefore, the date that the national

stage commenced was March 6, 2005 (i.e. 30 months from the priority date of September 6, 2003). The present application was filed in the United States on March 1, 2005.

"B delay":

March 6, 2008 (3 years after March 6, 2005, the date that the national stage commenced) to August 25, 2009 (issue date) = 537 days

Applicants' Delay

376 days (as calculated by the USPTO, see Exhibit A)

Total PTA


B delay – Applicants' Delay which is 537 days– 376 days which equals **161 days**.

For the reasons stated above, reconsideration of PTA is respectfully requested. Should any further fees be in error, the Commissioner is hereby authorized to debit or credit Deposit Account 19-4293.

Respectfully submitted,

Date: 8-25-09

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